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New Zealand.

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1911, No. 17.

Title. AN ACT to make Better Provision for the Grant of Patents and for the Registration of Designs and of Trade-marks.

[*28th October.*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement.

1. This Act may be cited as the Patents, Designs, and Trade-marks Act, 1911, and shall come into operation on the first day of July, nineteen hundred and twelve.

Interpretation.

2. In this Act, unless a contrary intention appears,—

"Article" means (as respects designs) any article of manufacture and any substance, artificial or natural, or partly artificial and partly natural:

"Copyright" means the exclusive right to apply a design to any article in any class in which the design is registered:

"Court" means the Supreme Court:

"Design" means any design (not being a design for a sculpture within the protection of the Copyright Act, 1908) applicable to any article, whether the design is applicable for the pattern or for the shape or configuration or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined:

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled "An Act concerning Monopolies and Dispensations with Penal Laws and the Forfeiture thereof"), and includes an alleged invention:

"Inventor" and "applicant," subject to the provisions of this Act, include the legal representative of a deceased inventor or applicant:

"Mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

"Patent" means letters patent for an invention:

"Patentee" means the person for the time being entitled to the benefit of a patent:

"Proprietor of a new and original design,"—

(*a.*) Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(*b.*) Where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(*c.*) In any other case, means the author of the design;

and, where the property in or the right to apply the design has devolved from the original proprietor upon any other person, includes that other person:

"Register" means the Register of Patents, or the Register of Designs, or the Register of Trade-marks, as the context may require, under this Act:

"Registered trade-mark" means a trade-mark which is actually upon the register:

"Registrable trade-mark" means a trade-mark which is capable of registration under the provisions of this Act:

"Registrar" means the Registrar of Patents, Designs, and Trade-marks:

"Trade-mark" means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of that trade-mark by virtue of manufacture, selection, certification, dealing with, or offering for sale:

"True and first inventor" includes the nominee or assignee of the actual inventor, but does not include the unauthorized importer of an invention from any place outside of New Zealand.

PART I.

PATENTS.

Application for and Grant of Patent.

Application.

3. (1.) An application for a patent may be made by any person who claims to be the true and first inventor of an invention, whether he is a British subject or not, and whether alone or jointly with any other person.

(2.) The application must be made in the prescribed form, and must be left at the Patent Office or a Local Patent Office.

(3.) The application must contain a declaration to the effect that the applicant is in possession of an invention whereof he or, in the case of a joint application, one at least of the applicants claims to be the true and first inventor, and for which he desires to obtain a patent, and must be accompanied by either a provisional or complete specification.

(4.) The declaration required by this section may be either a statutory declaration or not, as may be prescribed.

(5.) If the application is left at a Local Patent Office, the Local Patent Officer shall give to the applicant or his agent a receipt in the prescribed form, and shall forthwith transmit the document and a copy of his receipt to the Patent Office.

Specifications.

4. (1.) A provisional specification must describe the nature of the invention.

(2.) A complete specification must particularly describe and ascertain the nature of the invention, and the manner in which the same is to be performed.

(3.) In the case of any provisional or complete specification, where the Registrar deems it desirable, he may require that suitable drawings shall be supplied with the specification or at any time before the acceptance of the same, and those drawings shall be deemed to form part of the specification.

(4.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

(5.) Where the invention in respect of which an application is made is a chemical invention, such typical samples and specimens as may be prescribed shall, if in any particular case the Registrar considers it desirable so to require, be furnished before the acceptance of the complete specification.

Proceedings upon application.

5. (1.) The Registrar shall examine every application in priority according to the time at which it was received at the Patent Office or Local Patent Office, as the case may be, in order to ascertain whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention.

(2.) If he finds that the nature of the invention is not fairly described, or that the application, specification, or drawings have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, he may refuse to accept the application, or require that the application, specification, or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the Registrar so directs, bear date as from the time when the requirement is complied with.

(3.) Where the Registrar refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the Court, which may hear the applicant and the Registrar, and may make an order determining whether and subject to what conditions (if any) the application shall be accepted.

(4.) The Registrar shall, when an application has been accepted, give notice thereof to the applicant.

Provisional protection.

6. Where an application for a patent in respect of an invention has been accepted, the invention may, during the period between the date of the application and the date of sealing the patent, be used and published without prejudice to the patent to be granted for the invention; and this protection from the consequences of use and publication is in this Act referred to as provisional protection.

Time for leaving complete specification.

7. (1.) If the applicant does not leave a complete specification with his application, he may leave it either at the Patent Office or at any Local Patent Office at any subsequent time within nine months from the date of the application:

Provided that where an application is made for an extension of the time for leaving a complete specification, the Registrar shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding one month.

(2.) Unless a complete specification is so left, the application shall be deemed to be abandoned.

Comparison of provisional and complete specification.

8. (1.) Where a complete specification is left after a provisional specification, the Registrar shall examine both specifications for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention

particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2.) If he finds that the complete specification has not been prepared in the prescribed manner, he may refuse to accept the complete specification until it has been amended to his satisfaction.

(3.) If he finds that the invention particularly described in the complete specification is not substantially the same as that which is described in the provisional specification, he may—

(*a.*) Refuse to accept the complete specification until it has been amended to his satisfaction; or

(*b.*) With the consent of the applicant, cancel the provisional specification, and treat the application as having been made on the date at which the complete specification was left, and the application shall have effect as if made on that date:

Provided that where the complete specification includes an invention not included in the provisional specification, the Registrar may allow the original application to proceed so far as the invention included both in the provisional and in the complete specification is concerned, and treat the claim for the additional invention included in the complete specification as an application for that invention made on the date at which the complete specification was left.

(4.) A refusal of the Registrar to accept a complete specification shall be subject to appeal to the Court, which may hear the applicant and the Registrar, and may make an order determining whether and subject to what conditions (if any) the complete specification shall be accepted.

Application to be void after twelve months.

9. Unless a complete specification is accepted within twelve months from the date of the application, the application shall (except where an appeal has been lodged) become void:

Provided that where an application is made for an extension of time for the acceptance of a complete specification, the Registrar shall, on payment of the prescribed fee, grant an extension of time to the extent applied for, but not exceeding three months.

Investigation as to novelty and subject-matter.

10. (1.) Where an application for a patent has been made and a complete specification has been left, the Registrar may, in addition to the other inquiries which he is directed to make by this Act, make such further investigation as he thinks fit for the purpose of ascertaining whether the invention claimed is new, and whether it is a proper subject-matter for a patent.

(2.) If on any such investigation it appears that the invention is not new, or is for any other reason not a proper subject-matter for a patent, the applicant shall be informed thereof, and the applicant may, within such time as may be prescribed, amend his specification, and the amended specification shall be investigated in like manner as the original specification.

(3.) If the Registrar is satisfied that the invention is not new, or that it is for any other reason not a proper subject-matter for a patent, he may, after hearing the applicant, if desirous of being heard, and unless the objection is removed by amending the specification to the satisfaction of the Registrar, either—

(*a.*) Refuse to accept the specification; or

(*b.*) Accept the specification on condition that a reference to such prior specifications as he thinks fit be made in the specification by way of notice to the public.

(4.) An appeal shall lie from the decision of the Registrar under this section to the Court.

(5.) The investigations authorized by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Registrar or any other officer of the Patent Office by reason of or in connection with any such investigation or any proceeding consequent thereon.

Advertisement on acceptance of complete specification.

11. On the acceptance of the complete specification the Registrar shall advertise the acceptance, and the application and specifications, with the drawings (if any), shall be open to public inspection.

Effect of acceptance of complete specification.

12. After the acceptance of a complete specification, and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification; except that he shall not be entitled to institute any proceeding for infringement until a patent for the invention has been granted to him.

Opposition to grant of patent.

13. (1.) Any person may, at any time within two months from the date of the advertisement of the acceptance of a complete specification, give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds:—

(*a.*) That the applicant obtained the invention from him, or from a person of whom he is the legal representative; or

(*b.*) That the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification; or

(*c.*) That the invention claimed is not new, or is for any other reason not a proper subject-matter for a patent; or

(*d.*) That the invention has been claimed in any complete specification for a New Zealand patent which is or will be of prior date to the patent the grant of which is opposed; or

(*e.*) That the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification.

(2.) Where such notice is given, the Registrar shall give notice of the opposition to the applicant; and shall, on the expiration of the said period of two months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3.) The decision of the Registrar shall be subject to appeal to the Court, which may hear the applicant and the opponent if the opponent is, in its opinion, a person entitled to be heard in opposition to the grant of the patent, and shall decide the case.

Grant and sealing of patent.

14. (1.) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted to the applicant, or, in the

case of a joint application, to the applicants jointly, and the Registrar shall cause the patent to be sealed with the seal of the Patent Office.

(2.) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application: Provided that—

(*a.*) Where the Registrar has allowed an extension of the time within which a complete specification may be left or accepted, a further extension of four months after the said fifteen months shall be allowed for the sealing of the patent:

(*b.*) Where the sealing is delayed by an appeal to the Court, or by opposition to the grant of the patent, the patent may be sealed at such time as the Governor may direct:

(*c.*) Where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death:

(*d.*) Where, in consequence of the neglect or failure of the applicant to pay any fee, a patent cannot be sealed within the period allowed by this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed.

Date of patent.

15. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application:

Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification.

Effect, extent, and form of patent.

16. (1.) A patent sealed with the seal of the Patent Office shall have the same effect as if it were sealed with the Public Seal of New Zealand, and shall have effect throughout New Zealand:

Provided that a patentee may assign his patent for any place in or part of New Zealand as effectually as if the patent were originally granted to extend to that place or part only.

(2.) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

Fraudulent applications for patents.

17. (1.) A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

(2.) Where a patent has been revoked on the ground of fraud, the Registrar may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the patent so revoked:

Provided that no action shall be brought for any infringement of the patent so granted committed before the actual date when the patent was granted.

Single patent for cognate inventions.

18. (1.) Where the same applicant has put in two or more provisional specifications for inventions which are cognate or modifications one of the other, and has obtained thereby concurrent provisional protection for the same, and the Registrar is of opinion that the whole of those inventions are such as to constitute a single invention and may properly be included in one patent, he may accept one complete specification in respect of the whole of those applications and grant a single patent thereon.

(2.) Such a patent shall bear the date of the earliest of those applications, but, in considering the validity of the same and for the purpose of the provisions of this Act with respect to opposition to the grant of patents, the Court or the Registrar, as the case may be, shall have regard to the respective dates of the provisional specifications relating to the several matters claimed therein.

Term of Patent.

Term of patent.

19. (1.) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act, be fourteen years from its date.

(2.) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times:

Provided that the Registrar, upon the application of the patentee, shall, on receipt of such additional fee as may be prescribed, enlarge the time to such an extent as may be applied for, but not exceeding three months.

(3.) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it thinks fit, refuse to award any damages or any account of profits in respect of that infringement.

Extension of term of patent.

20. (1.) A patentee may, after advertising his intention to do so, present a petition to the Court praying that his patent may be extended for a further term; but the petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may give notice to the Court of objection to the extension.

(3.) On the hearing of any petition under this section, the patentee and any person who has given such notice of objection shall be made parties to the proceeding, and the Registrar shall be entitled to appear and be heard, and shall appear if so directed by the Court.

(4.) The Court, in considering its decision, shall have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If it appears to the Court that the patentee has been inadequately remunerated by his patent, the Court, may, by order extend the term of the patent for a further term not exceeding seven or, in exceptional cases, fourteen years, or may order the grant of a new patent for such term as may be specified in the order, and

containing any restriction, conditions, and provisions the Court may think fit.

Patents of addition.

21. (1.) Where a patent for an invention has been applied for or granted and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may, if he thinks fit, in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired.

(2.) Where an application containing such a request is made, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

(3.) A patent of addition shall remain in force so long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal.

(4.) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

Restoration of Lapsed Patents.

Restoration of lapsed patents.

22. (1.) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Registrar in the prescribed manner for an order for the restoration of the patent.

(2.) Every such application shall contain a statement of the circumstances which led to the omission of the payment of the prescribed fee.

(3.) If it appears from that statement that the omission was unintentional, and that no undue delay has occurred in the making of the application, the Registrar shall advertise the application; and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

(4.) Where such notice is given, the Registrar shall notify the applicant thereof.

(5.) After the expiration of the prescribed period the Registrar shall hear the case, and, subject to an appeal to the Court, issue an order either restoring the patent or dismissing the application.

(6.) In every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had been announced as void.

Amendment of Specification.

Amendment of specification by Registrar.

23. (1.) An applicant or a patentee may at any time, by request in writing left at the Patent Office, seek leave to amend his specification (including drawings forming part thereof) by way of disclaimer, correction, or explanation, stating the nature of and the reasons for the proposed amendment.

(2.) The request and the nature of the proposed amendment shall be advertised by the Registrar, and at any time within one

month from its advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3.) Where such a notice is given, the Registrar shall give notice of the opposition to the person making the request, and shall hear and decide the case.

(4.) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the Registrar shall determine whether and subject to what conditions (if any) the amendment ought to be allowed.

(5.) The decision of the Registrar in either case shall be subject to an appeal to the Court, which may hear the person making the request to amend and, where notice of opposition has been given, the person giving that notice, if he is, in the opinion of the Court, entitled to be heard in opposition to the request, and, where there is no opposition, the Registrar, and may make an order determining whether and subject to what conditions (if any) the amendment ought to be allowed.

(6.) No amendment shall be allowed that would make the specification as amended claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before amendment.

(7.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud.

(8.) The amendment shall be advertised by the Registrar, and shall for all purposes be deemed to form part of the specification.

(9.) This section shall not apply when and so long as any action for infringement or proceeding before the Court for the revocation of a patent is pending.

Amendment of specification by the Court.

24. (1.) In an action for infringement of a patent or proceedings before the Court for the revocation of a patent the Court may by order allow the patentee to amend his specification by way of disclaimer in such manner, and subject to such terms as to costs, advertisement, or otherwise, as the Court may think fit:

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment.

(2.) Where an application for such an order is made to the Court, notice of the application shall be given to the Registrar, and the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court.

(3.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud.

(4.) The amendment shall be advertised by the Registrar, and shall for all purposes form part of the specification.

Restriction on recovery of damages.

25. Where an amendment of a specification by way of disclaimer, correction, or explanation has been allowed under this Act, no damages or account of profits shall be given or directed in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Compulsory Licenses and Revocation.

Compulsory licenses and revocation.

26. (1.) Any person interested may present a petition to the Court, alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, and praying for the grant of a compulsory license or, in the alternative, for the revocation of the patent.

(2.) If it is proved to the satisfaction of the Court that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by the Court to grant licenses on such terms as the Court may think just; or, if the Court is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licenses, the patent may be revoked by order of the Court:

Provided that an order of revocation shall not be made before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(3.) On the hearing of any petition under this section the patentee, and any person claiming an interest in the patent as exclusive licensee or otherwise, shall be made parties to the proceeding, and the Registrar shall be entitled to appear and be heard.

(4.) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied—

(*a.*) If by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent, or to grant licenses on reasonable terms, any existing trade or industry, or the establishment of a new trade or industry, in New Zealand is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met; or

(*b.*) If any trade or industry in New Zealand is unfairly prejudiced by the conditions attached by the patentee, before or after the commencement of this Act, to the purchase, hire, or use of the patented article, or to the using or working of the patented process.

(5.) An order of the Court directing the grant of any license under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and made between the parties to the proceeding.

Revocation of patent.

27. (1.) Revocation of a patent may be obtained on petition to the Court.

(2.) Subject to the provisions of this Act, every ground on which a British patent might immediately before the first day of January, eighteen hundred and eighty-four (being the date of the commencement of the Imperial Patents, Designs, and Trade Marks Act, 1883), have been repealed by *scire facias* in England shall be available by way of defence to an action of infringement of a patent under this Act, and shall also be a ground of revocation under this section.

(3.) A petition for revocation of a patent may be presented—

(*a*.) By the Attorney-General, or any person authorized by him : or

(*b*.) By any person alleging—

(i.) That the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims ; or

(ii.) That he or any person under or through whom he claims was the true inventor of any invention included in the claim of the patentee ; or

(iii.) That he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold within New Zealand, before the date of the patent, anything claimed by the patentee as his invention.

Surrender of patent.

28. (1.) A patentee may at any time, by giving notice in the prescribed manner to the Registrar, offer to surrender his patent; and the Registrar, after giving notice of the offer and hearing all parties who desire to be heard, may, if he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

(2.) Any decision of the Registrar under this section shall be subject to appeal to the Court.

Provision where patent not worked in New Zealand.

29. (1.) At any time not less than four years after the date of a patent, and not less than two years after the commencement of this Act, the Attorney-General, or any person with the leave of the Attorney-General, may petition the Court for an order declaring that the patented article or process is not manufactured or carried on to an adequate extent in New Zealand.

(2.) If the Court is satisfied that the patented article or process is manufactured or carried on exclusively or mainly outside New Zealand, then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in New Zealand, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the Court shall make the order applied for to take effect either forthwith or after such reasonable interval as may be specified in the order, unless in the meantime it is shown to the satisfaction of the Court that the patented article or process is manufactured or carried on within New Zealand to an adequate extent :

Provided that no such order shall be made which is at variance with any treaty, convention, arrangement, or engagement to which the United Kingdom or New Zealand is a party.

(3.) If within the time limited in the order the patented article or process is not manufactured or carried on within New Zealand to an adequate extent, but the patentee gives satisfactory reasons why it is not so manufactured or carried on, the Court may extend the period mentioned in the previous order for such period, not exceeding twelve months, as may be specified in the subsequent order.

(4.) From and after the time when an order under subsection two takes effect the patent shall not be deemed to be infringed by the manufacture or carrying-on within New Zealand of the patented article or process, or by the vending within New Zealand of the patented article made in New Zealand.

(5.) If at any time after the making of an order under subsection two of this section the Court is satisfied that the patented article or process is not manufactured or carried on in New Zealand by any person other than the patentee, and that the patentee is manufacturing it or carrying it on to an adequate extent in New Zealand, the Court may in its discretion revoke the order, which shall thenceforth cease to have effect.

(6.) In any case in which the Court is empowered by this section to make an order under subsection two hereof it may, in its discretion, instead of making such an order, order the patentee to grant a compulsory license to the applicant on such terms as the Court thinks just.

Register of Patents.

Register of Patents.

30. (1.) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2.) The Register of Patents existing at the commencement of this Act shall be incorporated with and form part of the Register of Patents under this Act.

(3.) The Register of Patents shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

(4.) Copies of deeds, licenses, and any other documents affecting the proprietorship in any letters patent or in any license thereunder must be supplied to the Registrar in the prescribed manner for filing in the Patent Office.

The Crown.

Patent to bind the Crown.

31. A patent shall have to all intents the like effect against His Majesty the King as it has against a subject:

Provided that any Government Department may, by itself, its agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Minister of Finance, between the Department and the patentee, or, in default of agreement, as may be settled by the said Minister after hearing all parties interested.

Legal Proceedings.

Hearing with assessor.

32. (1.) In an action or proceeding for infringement or revocation of a patent, and in any appeal under this Act, the Court may, if it thinks fit, and shall on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

(2.) Every action for infringement of a patent shall be tried without a jury unless the Court, in its discretion, otherwise directs.

(3.) The Court of Appeal may, if it thinks fit, in any proceeding before it call in the aid of an assessor as aforesaid.

(4.) The remuneration to be paid to an assessor under this section shall be determined by the Court or the Court of Appeal, as the case may be, and be paid as part of the expenses of administering this Act.

Provisions in actions for infringement of patent.

33. Subject to any rules of Court made under this Act, the following provisions shall apply to all actions for infringement of a patent:—

(*a.*) The plaintiff shall deliver with his statement of claim, or by order of the Court or a Judge at any subsequent time, particulars of the breaches complained of.

(*b.*) The defendant shall deliver with his statement of defence, or by order of the Court or a Judge at any subsequent time, particulars of any objections on which he relies in support thereof.

(*c.*) If the defendant disputes the validity of the patent, the particulars delivered by him shall state on what grounds he disputes it, and if one of those grounds is want of novelty, shall state the time and place of the previous publication or user alleged by him.

(*d.*) At the hearing no evidence shall, except by leave of the Court or a Judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(*e.*) Particulars delivered may from time to time be amended by leave of the Court or a Judge.

(*f.*) On taxation of costs, regard shall be had to the particulars delivered by the plaintiff and by the defendant, and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the Court or a Judge to have been proved or to have been reasonable and proper without regard to the general costs of the case.

Power to counterclaim for revocation in an action for infringement.

34. A defendant in an action for infringement of a patent, if entitled to present a petition to the Court for the revocation of the patent, may, without presenting such a petition, apply, in accordance with the rules of the Court, by way of counterclaim in the action for the revocation of the patent.

Exemption of innocent infringer from liability for damages.

35. (1.) A patentee shall not be entitled to recover any damages or to obtain any account of profits in respect of an infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent; and the marking of an article with the word "Patent," "Patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the words "New Zealand" or the letters "N.Z." and by the number of the patent.

(2.) Nothing in this section shall affect any proceedings for an injunction.

Order for inspection, &c., in action.

36. In an action for infringement of a patent the Court may, on the application of either party, make such order for an injunction, inspection, or account, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court may see fit.

Certificate of validity questioned, and costs thereon.

37. In an action for infringement of a patent the Court may certify that the validity of the patent came in question; and if the Court so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favour, shall, unless the Court trying the action otherwise directs, have his full costs, charges, and expenses as between solicitor and client.

Remedy in case of groundless threats of legal proceedings.

38. (1.) Where a person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making the threats.

(2.) This section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Miscellaneous.

Grant of patent to two or more persons.

39. Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants; but, subject to any contract to the contrary, each of those persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a license without their consent; and if any such person dies, his beneficial interest in the patent shall devolve on his personal representatives.

Avoidance of certain conditions attached to the sale, &c., of patented articles.

40. (1.) It shall not be lawful in any contract made after the commencement of this Act in relation to the sale or lease of, or license to use or work, any article or process protected by a patent to insert a condition the effect of which will be—

(*a.*) To prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by any person other than the seller, lessor, or licensor or his nominees; or

(*b.*) To require the purchaser, lessee, or licensee to acquire from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent:

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy:

Provided that this subsection shall not apply if—

(i.) The seller, lessor, or licensor proves that at the time the contract was entered into the purchaser, lessee, or licensee

had the option of purchasing the article or obtaining a lease or license on reasonable terms, without such conditions as aforesaid ; and

(ii.) The contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease or license of such rent or royalty for the residue of the term of the contract, as may be fixed by an arbitrator appointed by the Governor in Council.

(2.) Any contract relating to the lease of or license to use or work any patented article or patented process, whether made before or after the commencement of this Act, may, at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party, but where any such notice is given determining any contract made before the commencement of this Act, the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Governor in Council.

(3.) Any contract made before the commencement of this Act relating to the lease of or license to use or work any patented article or process and containing any condition which, had the contract been made after the commencement of this Act, would by virtue of this section have been null and void may, at any time before the contract is determinable under the last preceding subsection, and notwithstanding anything in the same or any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party; but where any such notice is given the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Governor in Council.

(4.) The insertion by the patentee in a contract made after the commencement of this Act of any condition which by virtue of this section is null and void shall be available as a defence to an action for infringement of the patent to which the contract relates brought while that contract is in force.

(5.) Nothing in this section shall—

(*a.*) Affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person ; or

(*b.*) Be construed as validating any contract which would, apart from this section, be invalid ; or

(*c.*) Affect any right of determining a contract or condition in a contract exercisable independently of this section ; or

(*d.*) Affect any condition in a contract for the lease of or license to use a patented article whereby the lessor or licensor

reserves to himself or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair.

Costs and security for costs.

41. (1.) The Registrar shall, in proceedings relating to an opposition to the grant of a patent, or to an application for the amendment of a specification, have power by order to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid; and all costs so awarded shall constitute a debt payable in accordance with the order, and recoverable in any Court of competent jurisdiction.

(2.) If a party giving notice of opposition to the grant of a patent or to the amendment of a specification, or applying to the Court for the revocation of a patent, or giving notice of appeal from any decision of the Registrar, neither resides nor carries on business in New Zealand, the Court or, in the case of notice of opposition, the Registrar may require that party to give security for costs of the proceedings; and, in default of such security being given, may treat the proceedings as abandoned.

Publication of invention before grant of patent.

42. A patent shall not be held to be invalid by reason only of the invention in respect of which the patent was granted, or any part thereof, having been published prior to the date of the patent, if the patentee proves to the satisfaction of the Court that the publication was made without his knowledge and consent, and that the matter published was derived or obtained from him, and, if he learnt of the publication before the date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the publication.

Disconformity.

43. A patent shall not be held to be invalid on the ground that the complete specification claims a further or different invention to that contained in the provisional specification if the invention therein claimed, so far as it is not contained in the provisional specification, was novel at the date when the complete specification was put in, and the applicant was the first and true inventor thereof.

Patent on application of representative of deceased inventor.

44. (1.) If the person claiming to be the inventor of an invention dies without making an application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative.

(2.) Every such application must contain a declaration by the legal representative that he believes the deceased to be the true and first inventor of the invention.

Loss or destruction of patent.

45. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Registrar, the Registrar may at any time seal a duplicate thereof.

Provisions as to exhibitions.

46. The exhibition of an invention at an industrial or international exhibition, declared as such by the Governor, whether the same is held in New Zealand or elsewhere, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain

a patent in respect of the invention, or the validity of any patent granted on the application: Provided that—

(*a.*) The exhibitor, before exhibiting the invention, gives the Registrar the prescribed notice of his intention to do so; and

(*b.*) The application for a patent is made before or within six months from the date of the opening of the exhibition.

Foreign vessels within jurisdiction of New Zealand Courts.

47. (1.) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign ship within the jurisdiction of any Court in New Zealand, or the use of an invention in a foreign ship within that jurisdiction, provided that it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from New Zealand.

(2.) This section does not extend to ships of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in British ships while in the ports of that State or in the waters within the jurisdiction of its Courts.

PART II.

DESIGNS.

Registration of Designs.

Application for registration of designs.

48. (1.) The Registrar may, on the application made in the prescribed form and manner of any person claiming to be the proprietor of any new or original design not previously published in New Zealand, register the design under this Part of this Act.

(2.) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Registrar may decide the question.

(3.) The Registrar may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the Court; and the Court may make an order determining whether and subject to what conditions (if any) registration is to be permitted.

(4.) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(5.) A design when registered shall be registered as of the date of the application for registration.

Registration of designs in new classes.

49. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated,—

(*a.*) On the ground of the design not being a new and original design, by reason only that it was so previously registered; or

(*b.*) On the ground of the design having been previously published in New Zealand, by reason only that it has been applied to goods of any class in which it was so previously registered.

Certificate of registration.

50. (1.) On the registration of a design the Registrar shall issue to the applicant a certificate of registration under the hand of the Registrar and sealed with the seal of the Patent Office.

(2.) The Registrar may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

Register of Designs.

51. (1.) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

(2.) The Register of Designs existing at the commencement of this Act shall be incorporated with and form part of the Register of Designs under this Act.

(3.) The Register of Designs shall be *prima facie* evidence of any matters by this Act directed or authorized to be entered therein.

Copyright in Registered Designs.

Copyright on registration.

52. (1.) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2.) If, within the prescribed time before the expiration of the said five years, application for the extension of the period of copyright is made to the Registrar in the prescribed manner, the Registrar shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3.) If, within the prescribed time before the expiration of that second period of five years, application for the extension of the period of copyright is made to the Registrar in the prescribed manner, the Registrar may, subject to any regulations under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

Requirements before delivery on sale.

53. (1.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall,—

(*a.*) If exact representations or specimens were not furnished on the application for registration, furnish to the Registrar the prescribed number of exact representations or specimens of the design; and if he fails to do so, the Registrar may erase his name from the register, and thereupon the copyright in the design shall cease:

(*b.*) Cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered; and if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2.) Where a representation is made to the Governor by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Governor in Council may, if he thinks fit, by regulations dispense with or modify those requirements as regards any such class or description of articles to such extent and subject to such conditions as he thinks fit.

Effect of disclosure on copyright.

54. The disclosure of a design by the proprietor to any other person in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof, if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of registered designs.

55. (1.) During the existence of copyright in a design, or such shorter period (not being less than two years from the registration of the design) as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorized in writing by him, or a person authorized by the Registrar or by the Court, and furnishing such information as may enable the Registrar to identify the design, and shall not be open to the inspection of any person, except in the presence of the Registrar or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design or of any part thereof:

Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2.) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3.) Different periods may be prescribed under this section for different classes of goods.

Information as to existence of copyright.

56. On the request of any person furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee, the Registrar shall inform that person whether the registration still exists in respect of the design, and, if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

Provision where design not used in manufacture in New Zealand.

57. At any time not less than one year after the registration of a design any person may petition the Court for an order declaring that the design is not used for manufacture to an adequate extent in New Zealand; and where such a petition is presented the provisions of section twenty-nine hereof shall apply with the necessary modifications.

Industrial and International Exhibitions.

Provisions as to exhibitions.

58. The exhibition at an industrial or international exhibition, declared as such by the Governor, whether the same is held in New

Zealand or not, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication during the holding of any such exhibition of a description of a design, shall not prevent the design from being registered or invalidate the registration thereof: Provided that—

(*a.*) The exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the Registrar the prescribed notice of his intention to do so; and

(*b.*) The application for registration is made before or within six months after the date of the opening of the exhibition.

Legal Proceedings, &c.

Piracy of registered design.

59. (1.) During the existence of copyright in any design it shall not be lawful for any person,—

(*a.*) For the purposes of sale, to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(*b.*) Knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2.) If any person acts in contravention of this section, he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding fifty pounds, recoverable as a simple contract debt; or if the proprietor elects to bring an action for the recovery of damages for such contravention, and for an injunction against the repetition thereof, he shall be liable to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable as a simple contract debt in respect of any one design shall not exceed one hundred pounds.

Application of certain provisions of the Act as to patents, to designs.

60. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee, shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

PART III.

TRADE-MARKS.

Register of Trade-marks.

Register of Trade-marks.

61. (1.) There shall be kept at the Patent Office a book called the Register of Trade-marks, wherein shall be entered all registered trade-marks, with the names and addresses of their proprietors, notifi-

cations of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to registered trade-marks as may be prescribed.

(2.) The Register of Trade-marks existing on the commencement of this Act shall be incorporated with and form part of the register.

(3.) Subject to the provisions of sections eighty-nine and ninety-four of this Act, the validity of the original entry of any trade-mark upon the register so incorporated shall be determined in accordance with the statutes in force at the date of that entry, and any such trade-mark shall retain its original date, but for all other purposes shall be deemed to be a trade-mark registered under this Act.

Inspection of and extract from register.

62. The Register of Trade-marks shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in the register shall be given to any person requiring the same on payment of the prescribed fee.

Registrable Trade-marks.

Trade-mark must be for particular goods.

63. A trade-mark must be registered in respect of particular goods or classes of goods.

Registrable trade-marks.

64. (1.) A registrable trade-mark must contain or consist of at least one of the following essential particulars:—

(*a.*) The name of a company, individual, or firm represented in a special or particular manner:

(*b.*) The signature of the applicant for registration, or some predecessor in his business:

(*c.*) An invented word or invented words:

(*d.*) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification, a geographical name, or a surname:

(*e.*) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the preceding paragraphs (*a*), (*b*), (*c*), and (*d*) shall not, except by order of the Court, be deemed a distinctive mark:

Provided that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade-mark by the applicant or his predecessors in business before the first day of January, eighteen hundred and ninety, which has continued to be used (either in its original form or with additions or alterations not substantially affecting its identity) down to the date of the application for registration shall be registrable as a trade-mark under this Act.

(2.) For the purposes of this section "distinctive" means adapted to distinguish the goods of the proprietor of the trade-mark from those of other persons.

(3.) In determining whether a trade-mark is so adapted the tribunal may, in the case of a trade-mark in actual use, take into consideration the extent to which that user has rendered the trade-mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured trade-marks.

65. A trade-mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of that trade-mark. If and so far as a trade-mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on registration.

66. It shall not be lawful to register as a trade-mark or part of a trade-mark any matter the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of justice, or would be contrary to law or morality, or any scandalous design.

Registration of Trade-marks.

Application for registration.

67. (1.) Any person claiming to be the proprietor of a trade-mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2.) Subject to the provisions of this Act, the Registrar may refuse the application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(3.) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and the decision shall be subject to appeal to the Court.

(4.) On any such appeal the Court may hear the applicant and the Registrar, and may make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5.) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar other than those stated by him, except by leave of the Court. Where any further grounds of objection are taken, the applicant shall, subject to rules of Court, be entitled to withdraw his application without payment of costs.

(6.) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as the Registrar or the Court may think fit.

Advertisement of application.

68. When an application for registration of a trade-mark has been accepted, whether absolutely or subject to conditions, amendments, or modifications, the Registrar shall, as soon as may be after the acceptance, cause the application as accepted to be advertised. The advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to registration.

69. (1.) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade-mark, give notice to the Registrar of opposition to the registration.

(2.) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3.) The Registrar shall send a copy of the notice to the applicant, and within the prescribed time after the receipt of the notice the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(4.) If the applicant sends a counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of the opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions (if any), registration is to be permitted.

(5.) The decision of the Registrar shall be subject to appeal to the Court.

(6.) On any such appeal the Court may hear the parties and the Registrar, and may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.

(7.) On the hearing of any such appeal any party may, either in accordance with rules of Court or by special leave of the Court, bring forward further material for the consideration of the Court.

(8.) In proceedings under this section no further grounds of objection to the registration of a trade-mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinbefore provided, except by leave of the Court. Where any further grounds of objection are taken, the applicant shall, subject to rules of Court, be entitled to withdraw his application without payment of costs.

(9.) In any appeal under this section the Court may, after hearing the Registrar, permit the trade-mark proposed to be registered to be modified in any manner not substantially affecting its identity, but in such case the trade-mark as so modified shall be advertised in the prescribed manner before being registered.

(10.) The Registrar shall have power in proceedings before him under this section to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and all costs so awarded shall constitute a debt payable in accordance with the award and recoverable in any Court of competent jurisdiction.

(11.) If a party giving notice of opposition or of appeal neither resides nor carries on business in New Zealand, the Registrar or the Court, as the case may be, may require that party to give security for costs of the proceedings relative to the opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned.

Disclaimers.

70. If a trade-mark contains parts not separately registered by the proprietor as trade-marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether the trade-mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of the trade-mark, or of all or any portion of that matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other dis-

claimer as they may consider needful for the purpose of defining his rights under the registration:

Provided that no disclaimer upon the register shall affect any rights of the proprietor of a trade-mark except such as arise out of the registration of the trade-mark in respect of which the disclaimer is made.

Date of registration.

71. When an application for registration of a trade-mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or, having been opposed, the opposition has been decided in favour of the applicant, the Registrar shall, unless the Court otherwise directs, register the said trade-mark; and the trade-mark, when registered, shall be registered as of the date of the application for registration; and that date shall be deemed for the purposes of this Act to be the date of registration.

Certificate of registration.

72. On the registration of a trade-mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of that trade-mark under the hand of the Registrar, and sealed with the seal of the Patent Office.

Non-completion of registration.

73. Where registration of a trade-mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

Identical Trade-marks.

Identical marks.

74. Except by order of the Court or in the case of trade-marks in use before the first day of January, eighteen hundred and ninety, no trade-mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade-mark as to be calculated to deceive.

Rival claims to identical marks.

75. Where each of several persons claims to be proprietor of the same trade-mark, or of nearly identical trade-marks, in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him.

Concurrent user.

76. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade-mark, or of nearly identical trade-marks, for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations (if any) as to mode or place of user or otherwise as it may think it right to impose.

Assignment.

Assignment and transmission of trade-marks.

77. A trade-mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered, and shall be determinable with that goodwill. But nothing in this section shall be deemed

to affect the right of the proprietor of a registered trade-mark to assign the right to use the same in the United Kingdom, or in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in those goods.

Apportionment of marks on dissolution of partnership.

78. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of that person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Act as to associated trade-marks), on the application of the parties interested, permit an apportionment of the registered trade-marks of that person among the persons in fact continuing the business, subject to such conditions and modifications (if any) as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

Associated Trade-marks.

Associated trade-marks.

79. If application is made for the registration of a trade-mark so closely resembling a trade-mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that those trade-marks shall be entered on the register as associated trade-marks.

Combined trade-marks.

80. If the proprietor of a trade-mark claims to be entitled to the exclusive use of any portion of that trade-mark separately, he may apply to register the same as separate trade-marks. Each such separate trade-mark must satisfy all the conditions and shall have all the incidents of an independent trade-mark, except that when registered it and the trade-mark of which it forms a part shall be deemed to be associated trade-marks, and shall be entered on the register as such; but the user of the whole trade-mark shall for the purposes of this Act be deemed to be also a user of such registered trade-marks belonging to the same proprietor as it contains.

Series of trade-marks.

81. When a person claiming to be the proprietor of several trade-marks for the same description of goods which, while resembling each other in the material particulars thereof, differ in respect of—

(*a.*) Statements of the goods for which they are respectively used or proposed to be used; or

(*b.*) Statements of number, price, quality, or names of places; or

(*c.*) Other matter of a non-distinctive character which does not substantially affect the identity of the trade-mark; or

(*d.*) Colour,—

seeks to register those trade-marks, they may be registered as a series in one registration. All the trade-marks in a series of trade-marks so registered shall be deemed to be and shall be registered as associated trade-marks.

Assignment and user of associated trade-marks.

82. Associated trade-marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade-marks:

Provided that where, under the provisions of this Act, user of a registered trade-mark is required to be proved for any purpose, the tribunal may, if and so far as it thinks right, accept user of an associated registered trade-mark, or of the trade-mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

Renewal of Registration.

Duration of registration.

83. The registration of a trade-mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Renewal of registration.

84. The Registrar shall, on application made by the registered proprietor of a trade-mark in the prescribed manner and within the prescribed period, renew the registration of that trade-mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration.

85. At the prescribed time before the expiration of the last registration of a trade-mark the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire, and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained; and if, at the expiration of the time prescribed in that behalf, those conditions have not been duly complied with, the Registrar may remove the trade-mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade-mark.

86. Where a trade-mark has been removed from the register for non-payment of the fee for renewal, the trade-mark shall nevertheless, for the purpose of any application for registration during one year next after the date of the removal, be deemed to be a trade-mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no *bona fide* trade user of that trade-mark during the two years immediately preceding its removal.

Correction of the Register.

Registration of assignments, &c.

87. Subject to the provisions of this Act, where a person becomes entitled to a registered trade-mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of that person to be entered on the register as proprietor of the trade-mark.

Alteration of registered trade-mark.

88. (1.) The registered proprietor of any trade-mark may apply in the prescribed manner to the Registrar for leave to add to or alter that trade-mark in any manner not substantially affecting its identity; and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court.

(2.) If leave is granted, the trade-mark as altered shall be advertised in the prescribed manner.

Trade-marks registered under previous Acts.

89. No trade-mark which is upon the register at the commencement of this Act, and which under this Act is a registrable trade-mark, shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration. But nothing in this section shall subject any person to any liability in respect of any act or thing done before the commencement of this Act to which he would not have been subject under the Acts then in force.

Non-user of trade-mark.

90. A registered trade-mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connection with those goods, and there has in fact been no *bona fide* user of the same in connection therewith, or on the ground that there has been no *bona fide* user of the trade-mark in connection with those goods during the five years immediately preceding the application, unless in either case the non-user is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon the trade-mark in respect of those goods.

Effect of Registration.

Powers of registered proprietor.

91. Subject to the provisions of this Act—

(*a.*) The person for the time being entered in the register as proprietor of a trade-mark shall, subject to any rights appearing from the register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for the assignment:

(*b.*) Any equities in respect of a trade-mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade-mark.

92. Subject to the provisions of section ninety-four of this Act, and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade-mark shall, if valid, give to that person the exclusive right to the use of that trade-mark upon or in connection with the goods in respect of which it is registered:

Provided that where two or more persons are registered proprietors of the same, or substantially the same, trade-mark in respect of the same goods, no rights of exclusive user of that trade-mark shall (except so far as their respective rights have been defined by the Court) be acquired by any one of those persons as against any other by the registration thereof, but each of those persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be *prima facie* evidence of validity.

93. In all legal proceedings relating to a registered trade-mark (including applications under section one hundred and ten of this Act) the fact that a person is registered as proprietor of the trade-mark shall be *prima facie* evidence of the validity of the original registration of the trade-mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years.

94. In all legal proceedings relating to a registered trade-mark (including applications under section one hundred and ten of this Act), the original registration of that trade-mark shall, after the expiration of seven years from the date of the original registration, or seven years from the commencement of this Act, whichever last happens, be taken to be valid in all respects, unless the original registration was obtained by fraud, or unless the trade-mark offends against the provisions of section sixty-six of this Act:

Provided that nothing in this Part of this Act shall entitle the proprietor of a registered trade-mark to interfere with or restrain the user by any person of a similar trade-mark upon or in connection with goods upon or in connection with which that person has, by himself or his predecessors in business, continuously used that trade-mark from a date anterior to the user of the first-mentioned trade-mark by the proprietor thereof, or his predecessors in business, or to object (on such user being proved) to that person being put upon the register for such similar trade-mark in respect of those goods under the provisions of section seventy-six of this Act.

Unregistered trade-mark.

95. No person shall be entitled to institute any proceeding to prevent or to recover damages or profits in respect of the infringement of an unregistered trade-mark unless that trade-mark was in use before the first day of January, eighteen hundred and ninety, and has been refused registration under this Act. The Registrar may, on request, grant a certificate that such registration has been refused.

Infringement.

96. In an action for the infringement of a trade-mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade-mark is registered, and of any trade-marks or get-up legitimately used in connection with those goods by other persons.

User of name, address, or description of goods.

97. No registration of a trade-mark under this Act shall interfere with any *bona fide* use by a person of his own name or place of business, or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

"Passing off" action.

98. Nothing in this Part of this Act shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

Certificate of Validity.

Certificate of validity.

99. In any legal proceeding in which the validity of the registration of a registered trade-mark comes into question and is decided in favour of the proprietor of that trade-mark, the Court may certify the same, and if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the trade-mark, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless in that subsequent proceeding the Court certifies that he ought not to have the same.

PART IV.

GENERAL.

Administration of the Patent Office.

Patent Office. Registrar of Patents, &c.

100. (1.) The Governor may from time to time appoint such person as he thinks fit to be Registrar of Patents, Designs, and Trade-marks, and in like manner may appoint a place to be the Patent Office.

(2.) The person who at the commencement of this Act holds the office of Registrar of Patents, Designs, and Trade-marks under the Patents, Designs, and Trade-marks Act, 1908, shall be and act as Registrar of Patents, Designs, and Trade-marks under this Act.

(3.) The place at the commencement of this Act used as the Patent Office shall be deemed to have been appointed under this Act.

Deputy Registrar of Patents, &c.

101. (1.) The Governor may at any time appoint a fit and proper person to be Deputy Registrar to act in the case of the illness, incapacity, or absence of the Registrar, or in the case of any vacancy in the office of Registrar; and while so acting such Deputy shall have all the powers and privileges, and shall perform all the duties, and be subject to the responsibilities of the Registrar.

(2.) The fact of the Deputy Registrar acting as aforesaid shall be conclusive evidence of his authority so to do, and no person shall be concerned to inquire whether the occasion has arisen requiring or authorizing him so to act.

Local Patent Offices and Officers.

102. (1.) The Governor may from time to time, for the purposes of this Act, appoint Local Patent Offices and Local Patent Officers in such places as he thinks fit, and may revoke the appointment of any such offices and officers.

(2.) All appointments of Local Patent Offices in force at the time of the commencement of this Act under the Patents, Designs, and Trade-marks Act, 1908, shall be deemed to be made under this Act, and all Patent Office Agents holding office under that Act at the commencement of this Act shall be deemed to be appointed as Local Patent Officers under this Act.

Seal of Patent Office.

103. Impressions of the seal of the Patent Office shall be judicially noticed and admitted in evidence.

Fees.

104. There shall be paid in respect of the grant of patents, and the registration of designs and trade-marks and applications therefor, and in respect of other matters with relation to patents, designs, and trade-marks under this Act, such fees as may from time to time be prescribed by the Governor in Council, and those fees shall be paid into the Public Account and form part of the Consolidated Fund.

Provisions as to Registers and other Documents in Patent Office.

Trust not to be entered in registers.

105. There shall not be entered in any register kept under this Act, or be receivable by the Registrar, any notice of any trust expressed, implied, or constructive.

Inspection of and extracts from registers.

106. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act and to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any

entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Prohibition of publication of specifications, drawings, &c., where application abandoned, &c.

107. (1.) Where an application for a patent has been abandoned or become void, the specifications and drawings (if any) accompanying or left in connection with the application shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the Registrar.

(2.) Where an application for registration of a design has been abandoned or refused, the application, and any drawings, photographs, tracings, representations, or specimens left in connection with the application, shall not at any time be open to public inspection or be published by the Registrar.

Power of Registrar to correct clerical errors.

108. The Registrar may, on request in writing accompanied by the prescribed fee,—

(*a.*) Correct any clerical error in or in connection with an application for a patent or in any patent or any specification:

(*b.*) Cancel the registration of a design or trade-mark either wholly or in respect of any particular goods or classes of goods in connection with which the design or trade-mark is registered:

(*c.*) Correct any clerical error in the representation of a design or trade-mark or any clerical error or change in the name or address of the proprietor of any patent or design or trade-mark, or any clerical error in any other matter which is entered upon the Register of Patents, or the Register of Designs, or the Register of Trade-marks:

(*d.*) Enter any disclaimer or memorandum relating to a design or trade-mark which does not in any way extend the rights given by the existing registration of that design or trade-mark.

Entry of assignments and transmissions in register.

109. (1.) Where a person becomes entitled by assignment, transmission, or other operation of law to a patent or to the copyright in a registered design, the Registrar shall, on request and on proof of title to his satisfaction, register him as the proprietor of the patent or design.

(2.) Where any person becomes entitled as mortgagee, licensee, or otherwise to any interest in a patent or design, the Registrar shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the proper register.

(3.) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with the patent or design, and to give effectual receipts for any consideration for any such assignment, license, or dealing:

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other personal property.

Rectification of registers by Court.

110. (1.) The Court may, on the application of any person aggrieved by the non-insertion in or omission from the Register of Patents, or the Register of Designs, or the Register of Trade-marks

(as the case may be), of any entry, or by any entry made in any such register without sufficient cause, or by any entry wrongly remaining on any such register, or by an error or defect in any entry in any such register, make such order for making, expunging, or varying that entry as it thinks fit.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3.) Notice of any application under this section shall be given to the Registrar.

(4.) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Registrar, who shall upon the receipt of the notice rectify the register accordingly.

Powers and Duties of Registrar.

Exercise of discretionary power by Registrar.

111. Where any discretionary power is by or under this Act given to the Registrar, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a design or trade-mark, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Refusal to grant patent, &c., in certain cases.

112. The Registrar may refuse to grant a patent for an invention or to register a design or trade-mark, of which the use would, in his opinion, be contrary to law or morality.

Annual reports of Registrar.

113. The Registrar shall in every year cause a report respecting the execution by or under him of this Act to be laid before Parliament, and therein shall include for the year to which the report relates an account of all fees, salaries and allowances, and other money received and paid under this Act.

Evidence, &c.

Evidence before Registrar.

114. (1.) Subject to regulations under this Act, in any proceeding under this Act before the Registrar the evidence shall be given by statutory declaration in the absence of directions to the contrary; but in any case in which the Registrar thinks it right so to do, he may take evidence *viva voce* in lieu of or in addition to evidence by declaration, or allow any declarant to be cross-examined on his declaration. Any such statutory declaration may, in the case of appeal, be used before the Court in lieu of evidence by affidavit, and if so used shall have all the incidents and consequences of evidence by affidavit. Every such statutory declaration shall be exempt from stamp duty.

(2.) In any proceeding under this Act before the Registrar, he may administer oaths to any witness, and may in the prescribed manner require the attendance of any witness.

(3.) The Governor may from time to time, by Order in Council, make regulations—

(*a.*) Prescribing the manner in which witnesses may be required to attend and to give evidence in any proceedings before the Registrar:

(*b.*) Making provision for the payment of the expenses of such witnesses:

(*c.*) Imposing fines not exceeding twenty pounds for the failure or refusal of any person so to attend and give evidence.

Certificate of Registrar to be evidence.

115. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorized by this Act, or any regulations made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Evidence of documents in Patent Office.

116. Printed or written copies or extracts, purporting to be certified by the Registrar, and sealed with the seal of the Patent Office, of or from patents, specifications, and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts of justice, and before all persons acting judicially, and in all proceedings, without further proof or production of the originals.

Applications and notices by post.

117. Any application, notice, or other document authorized or required to be left, made, or given at the Patent Office, or at a Local Patent Office, or to the Registrar, or to any other person under this Act, may be sent by post.

Excluded days.

118. Where the last day fixed by this Act for doing anything under this Act falls on any day specified in regulations under this Act as an excluded day, the rules may provide for the thing being done on the next following day not being an excluded day.

Declaration by infant, lunatic, &c.

119. (1.) If any person is, by reason of infancy, lunacy, or other disability, incapable of making any declaration, or doing anything required or permitted by or under this Act, the guardian or committee (if any) of the person subject to the disability, or, if there is none, any person appointed by any Court possessing jurisdiction in respect of his property, may make that declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do that thing in the name and on behalf of the person subject to the disability.

(2.) An appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability, or of any other person interested in the making of the declaration or the doing of the thing.

Register of Patent Agents.

Register of Patent Agents.

120. (1.) A person shall not be entitled to describe himself as patent agent or a patent attorney, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act.

(2.) The Register of Patent Agents existing at the commencement of this Act shall be incorporated with and form part of the Register of Patent Agents under this Act.

(3.) Every person who knowingly describes himself as a patent agent or a patent attorney in contravention of this section is liable on summary conviction to a fine of twenty pounds.

(4.) In this section "patent agent" means exclusively an agent for obtaining patents in New Zealand.

Agents for patents.

121. (1.) Regulations under this Act may authorize the Registrar to refuse to recognize as agent in respect of any business under this Act any person whose name has been erased from the Register of Patent Agents or who is proved to the satisfaction of the Registrar, after being given an opportunity of being heard, to have been convicted of such an offence, or to have been guilty of such misconduct as would have rendered him liable, if his name had been on the Register of Patent Agents, to have his name erased therefrom; and may authorize the Registrar to refuse to recognize as agent in respect of any business under this Act any company which, if it had been an individual, the Registrar could refuse to recognize as such agent.

(2.) Where a company or firm acts as agents, such regulations as aforesaid may authorize the Registrar to refuse to recognize the company or firm as agent if any person whom the Registrar could refuse to recognize as an agent acts as director or manager of the company or is a partner in the firm.

(3.) Except as otherwise provided in this subsection, the Registrar shall refuse to recognize as agent in respect of any business under this Act any person who neither resides nor has a place of business in New Zealand:

Provided that the Registrar may in his discretion recognize as such agent any person not having a place of business in New Zealand but resident in a country in which persons resident in New Zealand are recognized as patent agents although having no place of business in that country.

Recovery of agents' charges.

122. No patent agent, or person acting in that capacity, shall commence or maintain any action for the recovery of any fees, charges, or disbursements paid or incurred or made by him for any business done by him on behalf of any person who claims to be the true and first inventor of an invention in the matter of any application for a patent until the expiration of seven days after a bill of such fees, charges, and disbursements, signed by him (or, in the case of a partnership, by any of the partners with the name of such partnership), or enclosed in or accompanied by a letter signed in like manner referring to such bill, has been delivered to the party chargeable. Such delivery may be effected either by personal delivery to the party chargeable or by leaving the bill or letter for him at his place of business, or dwellinghouse, or last known place of abode, or by forwarding the same to him by post in a registered letter addressed to him as aforesaid.

Regulations.

Regulations.

123. (1.) The Governor in Council may from time to time make such regulations as he thinks expedient, subject to the provisions of this Act,—

(*a.*) For regulating the practice of registration under this Act:

(*b.*) For classifying goods for the purposes of designs and trade-marks:

(*c.*) For making or requiring duplicates of specifications, drawings, and other documents:

(*d.*) For prescribing the mode of advertising any matter which by this Act is required to be advertised:

(*e.*) For securing and regulating the publishing and selling or distributing of copies of specifications, drawings, and other documents:

(*f.*) For securing and regulating the making, printing, publishing, and selling of indexes to and abridgments of specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents:

(*g.*) For regulating the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions in New Zealand or elsewhere:

(*h.*) For regulating the keeping of the Register of Patent Agents under this Act, the registration of patent agents, the terms and conditions of such registration, and the cases and manner in which such registration may be cancelled:

(*i.*) Generally for regulating the business of the Patent Office and all things by this Act placed under the direction or control of the Registrar.

(2.) All regulations made in pursuance of this Act shall be published in the *Gazette*, and shall be laid before Parliament as soon as practicable after they are made; and if either House of Parliament, within the next forty days after any regulations have been so laid before that House, resolves that the regulations or any of them ought to be annulled, the regulations, or those to which the resolution applies, shall after the date of that resolution be of no effect, without prejudice to the validity of anything done in the meantime under the regulations or to the making of any new regulations.

Legal Proceedings.

Rules of Court.

124. The Governor in Council, with the concurrence of any two or more of the Judges of the Court, may from time to time make rules of practice and procedure, consistent with this Act, for regulating proceedings in the Court under this Act; and subject thereto such proceedings shall be taken in accordance with the practice and procedure of the Court in like cases.

Appeals.

125. Every appeal given by this Act against a decision of the Registrar shall be by way of motion, of which notice shall be filed in the Court and served upon the Registrar within twenty-eight days after the day on which the decision appealed against was given.

Registrar to have notice of proceeding for rectification.

126. (1.) In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court.

(2.) Unless otherwise directed by the Court, the Registrar, in lieu of appearing and being heard, may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue, or of the grounds of any decision given by him affecting the same, or of the practice of the Patent Office in like cases, or of such other matters relevant to the issues and within his knowledge as such Registrar, as he thinks fit, and that statement shall be deemed to form part of the evidence in the proceeding.

Costs of proceedings before the Court.

127. In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

Offences.

Offences.

128. (1.) Every person who makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing knowing the entry or writing to be false, is liable on indictment to imprisonment with or without hard labour for any term not exceeding two years.

(2.) Every person who falsely represents that any article sold by him is patented in New Zealand, or falsely describes any design or trade-mark applied to any article sold by him as registered in New Zealand, is liable on summary conviction to a fine of twenty pounds.

(3.) Every person who sells an article having stamped, engraved, or impressed thereon, or otherwise applied thereto, the words "patented in New Zealand," or "registered in New Zealand," or any other words or letters implying that the article is patented in New Zealand or that the design or trade-mark applied thereto is registered in New Zealand, shall be deemed for the purposes of this section to represent that the article is so patented or that the design or trade-mark is so registered.

(4.) Every person who, after the expiry of a patent granted in New Zealand, or of the registration of a design or trade-mark registered in New Zealand, puts or causes to be put on any article to which the patent related, or to which the design or trade-mark had been applied, the words "patented in New Zealand," or "registered in New Zealand," or other words or letters implying that there is a patent, copyright of a design, or registration of a trade-mark subsisting in New Zealand, is liable on summary conviction to a fine of twenty pounds.

(5.) If any person uses on his place of business or on any document issued by him or otherwise the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the Patent Office he shall be liable on summary conviction to a fine of twenty pounds.

International and Colonial Arrangements.

International and colonial arrangements.

129. (1.) Subject to the provisions of this section, any person who has applied for protection for any invention, design, or trade-mark in any country to which this section applies shall be entitled to a patent for his invention, or to registration of his design or trade-mark, under this Act in priority to other applicants; and the patent or registration shall have the same date as the date of the application in that country: Provided that—

(*a.*) The application is made (in the case of a patent) within twelve months and (in the case of a design or trade-mark) within six months from the application for protection in that country; and

(*b.*) Nothing in this section shall entitle the patentee or proprietor of the design or trade-mark to recover damages or an account of profits in respect of infringements happening prior to the actual date on which his complete specification is accepted or his design or trade-mark is registered in New Zealand.

(2.) The patent granted for the invention or the registration of the design or trade-mark shall not be invalidated,—

(*a.*) In the case of a patent, by reason only of the publication of a description of, or use of, the invention; or

(*b.*) In the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design; or

(*c.*) In the case of a trade-mark, by reason only of the use of the trade-mark—

in New Zealand during the period specified in this section as that within which the application may be made.

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade-mark under this section must be made in the same manner as an ordinary application under this Act: Provided that,—

(*a.*) In the case of patents, the application shall be accompanied by a complete specification, which, if it is not accepted within the twelve months from the application for protection in the country aforesaid, shall (with the drawings, if any) be open to public inspection at the expiration of that period; and

(*b.*) In the case of trade-marks, any trade-mark the registration of which has been duly applied for in the country of origin may be registered under this Act.

(4.) This section applies to the following countries only:—

(*a.*) The United Kingdom:

(*b.*) Any country (whether a foreign State or a British possession) to which this section is declared to be applicable by an Order in Council made by the Governor under the authority hereinafter expressed, subject, however, to any restrictions or limitations imposed by that Order in Council:

(*c.*) Any foreign State to which section ninety-one of the Imperial Patents and Designs Act, 1907, is applicable for the time being by virtue of any Order in Council made by His Majesty, whether before or after the commencement of this Act, subject, however, to any restrictions or limitations imposed by that Order in Council in respect of the application of the said section.

(5.) Where it is made to appear to the Governor that satisfactory provision has been made as between New Zealand and any foreign State or British possession for the mutual protection of inventions, designs, or trade-marks, the Governor may by Order in Council declare that this section shall apply to that foreign State or British possession as from a date to be specified in the Order in Council, subject, however, to such restrictions or limitations (if any) as the Governor thinks fit.

(6.) The Governor may at any time by Order in Council declare that, as from a date to be specified in the Order, this section—

(*a.*) Shall no longer apply to any country named in the Order:

(*b.*) Shall in its application to that country be subject to the restrictions or limitations specified in the Order.

(7.) Every Order in Council made by the Governor under section ninety-nine of the Patents, Designs, and Trade-marks Act, 1908, or under section one hundred and seven of the Patents, Designs, and Trade-marks Act, 1889, and in force at the commencement of this Act, shall continue in force and shall operate as if made under this section, and this section shall apply accordingly to every British possession to which any such Order in Council relates, subject, however, to any restrictions or limitations imposed by the Order.

Repeal and Savings.

Saving of prerogative of Crown.

130. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

Repeal and savings.

131. (1.) The Patents, Designs, and Trade-marks Act, 1908 (except subsection one of section one, section two, and sections eighty-two to ninety-seven thereof), is hereby repealed.

(2.) Except where otherwise expressly provided, this Act shall extend to all patents granted and all designs and trade-marks registered before the commencement of this Act, and to applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

Section 2 of Copyright Act amended.

132. Section two of the Copyright Act, 1908, is hereby amended by omitting from subsection one thereof the words "useful or ornamental design," but that Act shall nevertheless continue to apply to any useful or ornamental design the copyright in respect of which has been registered thereunder before the commencement of this Act.

WELLINGTON: Printed under authority of the New Zealand Government, by JOHN MACKAY, Government Printer.—1911.

Price 1s. 6d.]

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